

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed April 2, 2010. Claims 1, 3-6, 21-28, and 31-42 were pending and rejected in view of cited art. Claims 1, 3-4, 21-28, 31-35, and 37-42 are amended.<sup>1</sup> Claims 1, 3-6, 21-28, and 31-42 are now pending in view of the above amendments, with claims 1, 34, and 39 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

### **B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

The Office Action rejected claims 1, 3-6, 21-28, and 31-42 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, the Applicant has cancelled the subject matter "predetermined extent" from the claims. Applicant respectfully requests withdrawal of this rejection.

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<sup>1</sup> The amendments are fully supported by the patent application as originally filed. See publication WO 2004/02617 at: page 2, last paragraph; page 3, last paragraph; page 4, 10<sup>th</sup> paragraph; and the figures.

**C. PRIOR ART REJECTIONS**

**I. REJECTION UNDER 35 U.S.C. §102(b)**

The Office Action rejected claims 1, 3, 5-6, and 34-35 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,843,172 (*Yan*). Applicant respectfully traverses.

In accordance with Applicant's understanding, *Yan* only teaches stents that are sintered together from a plurality of particles so as to be porous and have internal reservoirs. *Yan* does not teach or suggest sandblasting the surface of a porous stent to further increase its roughness. Since the stents taught by *Yan* are porous, and thereby have an external surface of variable topology and have a roughened surface, there appears to be no reason to further roughen a roughened surface by sandblasting. Thus, there appears to be no reason to sandblast the surface of the porous stent or to include sandblasted particles in the surface of the porous stent.

Accordingly, Applicant respectfully asserts that *Yan* does not teach each and every element of each and every claim. With regard to independent claims 1, 34, and 39, *Yan* does not teach a stent "wherein at least a portion of the roughened surfaces includes sandblasted particles" (emphasis added). Applicant respectfully asserts that a stent with roughened surfaces including sandblasted particles is not the same as a stent that is porous. Thus, *Yan* does not teach a stent with a roughened surface that includes sandblasted particles.

Accordingly, for at least the reasons noted, independent claims 1, 34, and 39 and the claims depending therefrom<sup>2</sup> are neither anticipated nor made obvious by *Yan*, either singly or in combination with any other cited prior art of record, and thus Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b).

**II. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejected claims 4 and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Yan* in view of U.S. Publication No. 2002/082679 (*Sirhan*). The Office Action also rejected claims 21-28, 37-40, and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Yan* in view of U.S. Patent No. 6,174,329 (*Callol*), while claims 31-33 and 41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yan* in view of *Callol* and *Sirhan*. Applicant respectfully traverses.

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<sup>2</sup> Emphasis herein of the differences between the independent claims and the prior art are equally applicable to the dependent claims 3-6, 21-28, 31-33, 35-38, and 40-42, but this does not mean, on the other hand, that these are necessarily the *only* differences between the claimed invention and the prior art of record. Applicant thus does not acquiesce in any asserted rejections of the dependent claims 3-6, 21-28, 31-33, 35-38, and 40-42.

*Sirhan* and *Callol* were cited as secondary references. *Sirhan* was cited for the proposition that it discloses "the use of tacrolimus as a suitable drug for [a] therapeutic treatment" (Office Action, p. 4). *Callol* was cited for the proposition that it discloses "the use of sandblasting as a suitable means for roughening a stent surface (col. 7 lines 23-27) in order to improve adhesion between layers" (Office Action, p. 5). That said, none of these references otherwise add anything in terms of reading on the claims as amended herein, particularly in reference to those claimed limitations noted above which clearly define over *Yan*.

For example, neither *Yan* nor *Callol* teaches or suggests that it would be beneficial or desirable to have a stent with a roughened external surface having sandblasted particles. *Callol* teaches sandblasting to form a rough surface for improving mechanical adhesion between layers, but does not appear to teach or suggest a roughened external surface that includes sandblasted particles. Additionally, *Yan* teaches a porous stent that already has a rough surface, by virtue of the surface topology having the pores and the formation from sintering particles together. As mentioned above, there appears to be no reason to roughen an already roughened surface, and thereby, no reason to sandblast a sintered, porous stent of *Yan* using the process described by *Callol*.

Thus, even assuming *arguendo* that any of the references to *Sirhan* and *Callol* are properly combinable with *Yan*, such combinations are clearly distinguished by the claims for the reasons already noted in reference to *Yan*.

#### **D. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

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Amendment "E" dated July 2, 2010  
Reply to Office Action mailed April 2, 2010

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 2<sup>nd</sup> day of July, 2010.

Respectfully submitted,

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